

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Regular Session

October 1, 2001  
8:00 p.m.

Council Chambers  
Bellevue, Washington

PRESENT: Mayor Mosher, Deputy Mayor Marshall, Councilmembers Creighton, Davidson, Degginger, Lee, and Noble

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:07 p.m. by Mayor Mosher, who presided.

2. Roll Call, Flag Salute

Upon roll call by the City Clerk, all Councilmembers were present. Mr. Noble led the flag salute.

(a) Ivanhoe Performing Arts Theatre Awards

Parks and Community Services Director Patrick Foran noted the grand opening on September 16, 2001, of the Ivanhoe Performing Arts Theatre which now provides performance space for the Crossroads Youth Theatre program.

James McClain, Recreation Performing Arts Coordinator, introduced the following individuals involved with the Crossroads program who received awards at the September opening of Ivanhoe Performing Arts Theatre:

Scott Rise started with the program as a 16-year-old and was formerly employed by the City. He now works for VoiceStream but continues to provide extensive assistance as a volunteer. Mr. Rise was recognized for his 10 years of service to the program and for handling the technical aspects (lights, sets, and sound) of all theatre productions.

Norm Dalire has been involved with Crossroads Youth Theatre since 1993. His leadership guided the development of the theatre's day camp program and he recently accepted a part-time position with the City.

Karen Gath-McClain was recognized for costuming thousands of young people over the past 10 years and contributing more than 1000 hours per year of community service as a volunteer.

Councilmember Degginger announced that an auction will be held on Friday night at Newcastle Golf Course to raise money for the Crossroads Youth Theatre program.

(b) Washington State Chapter of Mothers Against Drunk Driving Awards

Lt. Dan Hatten introduced Susan Billings, victim advocate for the King County Chapter of Mothers Against Drunk Driving. Ms. Billings presented awards to two Bellevue police officers for their commitment to keeping drunk drivers off the road – Bryce Corey and Doug Demetre. She thanked the officers for keeping the community safe.

(c) Presentation to *Voices of the City* Poet and Photographer

Yvonne Tate, Arts Commission Chair, introduced Mary Ann Eschbach and thanked her for coordinating the “Voices of the City” poetry and photography project on the Pedestrian Corridor. Ms. Eschbach thanked Council for its support of the program. She introduced Janet Gill, who read her poem, “Into the Urban Fold,” and thanked Council for sponsoring the project.

3. Communications: Written and Oral

Mayor Mosher noted that speakers are not allowed to address quasi-judicial topics on tonight’s agenda.

- (a) Jo-Ellen Smith discussed her concerns about public safety.
- (b) Mark Wolf described plans for the development of property on 113<sup>th</sup> Place SE, which was the subject of Council discussion during the earlier study session. Mr. Wolf and his business partners purchased the property as a location for their own business. He said the disturbance area of the proposed building is the same as it would be for a home, and development of the site would help to stabilize the slope. He urged Councilmembers to visit the site before making their decision.
- (c) Mark Gregoire, a resident of Cougar Mountain, discussed zoning and the 1995 amendment of the Newcastle Subarea Plan. He said Cougar Mountain Way was designed to accommodate 4,000 vehicle trips per day. In June 2000, the street was carrying 3,500 trips per day. If all of the presently approved developments are completed, they will add another 2,800 trips per day. Further development of eight more plats on the mountain will add another 1,700 trips per day, for a total of 8,000 trips per day. Mr. Gregoire offered to provide a technical presentation to Council regarding the roads on Cougar Mountain.
- (d) Richard Sartor expressed concern that the requested Comprehensive Plan Amendment affecting property on 113<sup>th</sup> Place SE is inconsistent with the City’s Comprehensive Plan.

- (e) Henry Smilowicz lives next door to Mr. Sartor and is also concerned about the CPA affecting property on 113<sup>th</sup> Place SE. He said the Newport Hills Community Club formally took a position against the granting of office zoning for the property. A petition against the CPA was signed by more than 120 residents, and he feels more neighbors would have signed the petition if contacted. Mr. Smilowicz said three homes above the property have slipped. He is concerned about the negative impacts of additional construction on the 113<sup>th</sup> Place SE site.
  - (f) Julianne McIntosh thanked Councilmembers for contributing their time to keep the city beautiful. She described problems with standing water and erosion in the vicinity of the 113<sup>th</sup> Place SE site, which is the subject of a proposed Comprehensive Plan Amendment.
- 4. Reports of Community Councils, Boards and Commissions: None.
  - 5. Report of the City Manager

City Manager Steve Sarkozy recalled that the Bellevue Youth Link program was established eight years ago as a catalyst for responding to the interests and concerns of young people. He announced appointment of the following new members to the Bellevue Youth Link Board:

Sok-May Tea  
Michelle Mattson-Orton  
Parhum Namdaran  
Jasmin Thomas  
Rosie Chartier  
David Ayele

Barbara Radford is a new adult advisor to the Board.

Mr. Sarkozy said the City received several calls of concern regarding flag etiquette. He explained that flags at City facilities were raised at half-mast for one week following September 11, as suggested by President Bush. Fire Department facilities will continue to display flags at half-mast for 30 days in honor of the public safety personnel who lost their lives as a result of the terrorist attacks. Mr. Sarkozy assured the public that the City is following appropriate flag etiquette.

Mr. Sarkozy said the State Auditor recently completed its annual audit of the City's finances and record-keeping procedures and found the City to be in good shape. Additional details will be provided to Council in the near future.

6. Council Business

Councilmembers provided their reports in the earlier Study Session.

7. Approval of the Agenda

➡ Mrs. Marshall moved to approve the agenda, and Mr. Creighton seconded the motion.

➡ The motion to approve the agenda carried by a vote of 7-0.

8. Consent Calendar

➡ Mrs. Marshall moved to approve the Consent Calendar, and Mr. Creighton seconded the motion.

➡ The motion to approve the Consent Calendar carried by a vote of 7-0, and the following items were approved:

- (a) Minutes of September 4, 2001 Study Session  
Minutes of September 4, 2001 Regular Session  
Minutes of September 10, 2001 Extended Study Session
- (b) Motion to approve payment of claims for the period ending September 25, 2001, and payroll for the period September 1 through September 15, 2001.
- (c) Resolution No. 6598 authorizing execution of a one-year (2001/2002) Software Support Services Renewal Agreement with TriTech Software Systems in the amount of \$108,407.50 and execution of all future Software Support Services Renewal Agreements falling within established price parameters for maintenance of the Computer Aided Dispatch System.
- (d) Motion to award Bid No. 0150 for replacement of 29 two-port hydrants in the amount of \$131,147.52 to Bonner Brothers Construction as low bidder.  
(CIP Project No. W-82)
- (e) Ordinance No. 5321 authorizing execution of an agreement with Seattle-King County Department of Public Health to accept grant reimbursement funds to implement hazardous waste prevention and education programs in accordance with the Local Hazardous Waste Management Plan; establishing a project within the Operating Grants and Donation Fund by appropriating unanticipated and future revenues to that fund; appropriating unanticipated revenues to the Solid Waste Fund and authorizing expenditures from said fund.

9. Public Hearings: None.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions: None.

12. Unfinished Business

- (a) Motion to reconsider the February 5, 2001, Council action granting the appeal of the Cougar Mountain Residents Association and denying the Open Window School's application for a conditional use permit.

*[Discussion and vote postponed from September 24, 2001, Council meeting.]*

Mayor Mosher explained that a motion to reconsider the February 5, 2001, Council action granting the appeal of the Cougar Mountain Residents Association and denying the Open Window School's application for a conditional use permit was made on September 24, 2001. On the same date, Council voted to postpone discussion and action on the motion to reconsider to today's meeting.

Mr. Lee excused himself from participating in the matter and left Council Chambers.

Mayor Mosher asked Councilmembers to disclose any ex parte communications regarding the Open Window School matter.

Dr. Davidson said he received many emails about Open Window School that were addressed to the entire Council and copied to the City Clerk, but he did not read any of the emails. He has had no other communications whether oral, written, voicemail, or electronic regarding Open Window School.

Mr. Creighton said prior to Council's approval of the conditional use permit on March 19, 2001, he received emails about Open Window School that were addressed to the entire Council including one from Mr. Herbig. He did not read any of the emails because the matter was considered quasi-judicial at that time. After March 19, Mr. Creighton received a number of emails thanking him for his vote, which he read and deleted. None of these emails contained any substantive information or discussion about the merits of the appeal. Mr. Creighton said he does not recall any other communications whether oral, written, voicemail, or electronic regarding Open Window School.

Mr. Noble said prior to February 12, 2001, he received numerous emails from people on both sides of the issue, most of which were addressed to the entire Council and also received by the City Clerk. Mr. Noble said he read only one message which was from David Herbig, a longtime acquaintance. He turned the message over to the City Clerk and it is a matter of public record. Mr. Noble said the substance of the email was that Mr. Herbig's child had attended Open Window School for six years, it was an amazing place that offered specialized education for gifted children, it is better than the present program offered by Bellevue School District, the school is a good corporate citizen with dedicated parental support, the school's parents will do anything for the school including working with its neighbors, the current school goes only to fifth grade but the new school will go through eighth grade, and the school has passed all building requirements. Mr. Noble said Mr. Herbig urged him to reconsider and offered to provide additional information about the school. Mr. Noble did not respond to the email.

Mr. Noble said he also had one oral communication with another acquaintance, Troy Roper, prior to the February 12 Council meeting. Before anything of substance was discussed, Mr.

Noble told Mr. Roper that he could not discuss the matter and the conversation was terminated. Mr. Noble said he had no further ex parte contacts regarding the Open Window School matter after February 12 and up to March 19, other than emails sent to the entire Council and City Clerk. He read none of the emails pursuant to direction from the City Attorney's Office.

After the March 19 Council vote on the ordinance approving the conditional use permit, Mr. Noble received a number of emails, some of which he read. Those he read only contained thank-you's or words to that effect and none contained anything substantive on the matter. Mr. Noble noted that on September 24 the attorney representing Cougar Mountain Residents Association asked Mr. Noble to recuse himself from these proceedings. Subsequent to the September 24 Council meeting, the City received a letter from the attorney indicating his desire to withdraw this request.

Deputy Mayor Marshall said she received many emails addressed to the entire Council prior to February 12, 2001. She did not read any of the emails received after the appeal to City Council was filed. She acknowledged that she opened some of them, but as soon as she realized the subject matter she closed the emails and forwarded them to the City Clerk's Office. She did not recall reading anything of substance about the appeal in any of the emails.

Prior to the appeal of the Hearing Examiner's decision by the Cougar Mountain Residents Association, Mrs. Marshall met with residents and toured the area. Residents discussed a variety of issues including traffic and the proposed Open Window School. Mrs. Marshall formed no opinions at that time about the school's application for a conditional use permit. She was later contacted by residents association members about their proposed appeal and agreed to meet with them again. After talking to the City Clerk and realizing the matter was quasi-judicial, Mrs. Marshall canceled the meeting.

During the months prior to the first Council hearing on the issue in October 2000, Mrs. Marshall was contacted by a representative of Open Window School. At that time, she repeated her suggestion that the school contact Metro about possible solutions to the traffic issues that appeared to be of concern to residents. She hoped the parties would be able to work out any differences regarding traffic. Mrs. Marshall said she had not at any time prior to the hearing of February 5, 2001, made up her mind on the issue relating to the application. She understood she was expected to keep an open mind and to decide the appeal based on the record before the Council, which she ultimately did.

After Council voted in March 2001 to grant the permit, Mrs. Marshall said she ran into Mr. Vradenburg, a friend, at Newport Heights Elementary School and they hugged. She told him she assumed he would be a good neighbor as he and other school representatives have promised. He said he would and they did not discuss the matter any further. Several weeks later, shortly before the residents appealed Council's decision to Superior Court, Mark Gregoire dropped by Mrs. Marshall's home unannounced and left a packet of material which he described as being about traffic on Cougar Mountain Way. They did not discuss the contents and since the City Attorney already had a packet of the material from Mr. Degginger, Mrs. Marshall forwarded the packet to City staff without ever having read it.

Mrs. Marshall noted that several doctors contacted her husband at Overlake Hospital, where he works. Her husband told the doctors the matter was quasi-judicial and that he could not discuss their conversations with Mrs. Marshall, which he did not. Mrs. Marshall said she has had no other communications whether oral, written, voicemail, or electronic regarding Open Window School.

Noting that this disclosure reflects the same statements she made on September 24, Mrs. Marshall said she would like to make one addition. She described a letter received from Mr. Gendler, attorney for Cougar Mountain Residents Association, in which he states that Councilmember Noble and Mrs. Marshall made the motion to reconsider on September 24 in response to a request by Councilmember Lee. Mrs. Marshall clarified that she was not acting at Mr. Lee's request and she supported Mr. Noble's motion by her own choice. She said the City Clerk checked the audio recording of the September 24 meeting and confirmed that Mrs. Marshall did not mention Mr. Lee.

Mr. Degginger said he received numerous emails from people on both sides of the issue, most of which were addressed to the entire Council, prior to February 12, 2001. He did not read them and forwarded them to the City Clerk. In approximately July 2000, Mr. Degginger received a voicemail message from Mark Gregoire inviting him to tour the area but he did not return the call. Mr. Degginger attended part of a presentation about the proposed Open Window School at Cougar Ridge Elementary School in May 2000 because he happened to be at the school on unrelated business.

After February 12, Mr. Degginger received, but did not read, many emails addressed to the Council. He received several emails addressed to him specifically, which he opened because the titles did not indicate they were about Open Window School. When he encountered such messages, he closed them and forwarded them to the City Clerk. Mr. Degginger did not recall reading anything of substance about the application.

After February 12 and until Council's vote on the ordinance approving the conditional use permit on March 19, 2001, Mr. Degginger received no further emails and had no ex parte communications on the issue. A few weeks after March 19 and shortly before the residents filed their appeal, Mr. Gregoire stopped by Mr. Degginger's home unannounced on a Saturday morning and left a packet of materials about traffic on Cougar Mountain Way. Mr. Degginger invited Mr. Gregoire in and they discussed some of the documents in the packet. Mr. Degginger said he does not recall what Mr. Gregoire said about the documents that day. He did not read the packet, set it aside, and has not read it to date, primarily because he considered the matter to be concluded by that time. Mr. Degginger recalled thinking at the time that nothing Mr. Gregoire said about the material in the packet was significantly different from what he learned from the record or reviewed on the appeal.

Mr. Degginger received an email approximately three weeks ago from Jim Adcock about Open Window School. He did not read it and forwarded it to the City Clerk.

Mayor Mosher received many emails about the matter, most of which were addressed to the entire Council. He deleted most messages with "Open Window School" in the subject line

without opening them. Some were forwarded to the City Clerk. He opened some messages that, once read, appeared to be about Open Window School. He closed these messages immediately and forwarded them to the City Clerk. Mr. Mosher said he did not recall reading any information in the emails about the substance or merits of the appeal. Some urged him to vote for the school and some urged him to vote against the school. Mayor Mosher received some emails addressed only to him. Those with titles referencing Open Window School were forwarded directly to the City Clerk, and others were closed and forwarded once he realized they were about the school. Mayor Mosher said he had no other oral, written, voicemail, or electronic communications regarding the Open Window School conditional use permit application.

Mayor Mosher asked whether anyone in the audience would like to question Councilmembers regarding their disclosures or offer rebuttal. No one came forward to comment.

Mayor Mosher opened the floor for Council discussion on the motion to reconsider, which was made on September 24, 2001.

- ☞ The motion to reconsider the February 5, 2001, Council action granting the appeal of the Cougar Mountain Residents Association and denying the Open Window School's application for a conditional use permit carried by a vote of 5-1, with Mr. Degginger dissenting.
- ☞ Dr. Davidson moved to deny the appeal and to grant the conditional use permit for the Open Window School with the conditions imposed by the Hearing Examiner. Mr. Creighton seconded the motion.

Mrs. Marshall introduced three amendments to the Hearing Examiner's conditions. Two amendments relate to the Hearing Examiner's Condition #6 and one concerns the offer of the applicant to contribute \$5,000 toward a traffic signal. Mrs. Marshall said Condition #6 should be revised to conform to the Hearing Examiner's intent that subsections (a) through (l) apply at all times, not just during evening and weekend periods. She said the record is clear that the applicant has voluntarily offered to accept such a change in order to clarify the intent of the condition.

- Mrs. Marshall moved to amend the main motion by revising the Hearing Examiner's Condition #6 so that subsections (a) through (l) will apply at all times. Dr. Davidson seconded the motion.

Mrs. Marshall said if this amendment is successful, she requests that staff bring back language for Council action to implement the condition.

- The motion to amend the Hearing Examiner's Condition #6 so that subsections (a) through (l) will apply at all times carried by a vote of 6-0.

Mrs. Marshall suggested that the requirement imposed in Condition #6 by the Hearing Examiner, restricting use of the property to the school's activities at all times, be removed so that the school's facilities can be used for neighborhood activities when not in use by the school. She

feels the school should be available for use by the neighbors if, and only if, the school in its sole discretion chooses to make it available. Mrs. Marshall said Comprehensive Plan Policies PA-14, -15, -16, and -17 encourage partnerships with nonprofit agencies and school districts to utilize school sites for recreation, meeting space, athletic instruction, and special activities.

- Mrs. Marshall moved to further amend the Hearing Examiner's Condition #6, if the school is willing to accept the amendment, so that the first sentence reads as follows: "To control potential weekend and evening use of the school facilities by the school or a community group and related traffic impacts to the community, all such activities shall be limited to Open Window School functions unless Open Window School, in its sole discretion, opens its facilities to use for neighborhood activities."

At Mayor Mosher's request, Dan Vradenburg indicated the school will accept this amendment.

Dr. Davidson seconded the motion to further amend Condition #6.

- The motion to amend the Hearing Examiner's Condition #6 so that the first sentence reads as follows, "To control potential weekend and evening use of the school facilities by the school or a community group and related traffic impacts to the community, all such activities shall be limited to Open Window School functions unless Open Window School, in its sole discretion, opens its facilities to use for neighborhood activities," carried by a vote of 6-0.

Continuing, Mrs. Marshall indicated that at the February 5, 2001, Council meeting, the applicant agreed to a condition to pay \$5,000 toward a traffic signal at Cougar Mountain Way SE and Lakemont Boulevard.

- Mrs. Marshall moved that the condition previously offered by Open Window School to contribute \$5,000 toward the cost of constructing a traffic signal at Cougar Mountain Way SE and Lakemont Boulevard be added as a new discretionary condition. If the traffic signal is not installed within six years of the issuance of a building permit for the school, the money will be returned to the applicant. Dr. Davidson seconded the motion.

Mr. Vradenburg indicated the school's acceptance of this condition.

- The motion to add a condition requiring Open Window School to contribute \$5,000 toward the cost of constructing a traffic signal at Cougar Mountain Way SE and Lakemont Boulevard, if installed within six years of the issuance of a building permit for the school, carried by a vote of 6-0.

Mr. Degginger moved to amend the main motion to require the school to provide bus transportation as a condition of granting the Conditional Use Permit. He feels the traffic impacts of the Open Window School project justify the imposition of such a condition.

In response to Mayor Mosher, City Attorney Dick Andrews said the record indicates a substantial increase in vehicle trips associated with the school project. However, before the

Council could impose such a condition, Council would need to find that the Hearing Examiner had made a mistake and that there was not substantial evidence to support the Hearing Examiner's decision.

In response to Mayor Mosher, Mr. Vradenburg indicated that the school cannot accept this condition. There was no second to Mr. Degginger's motion. Mr. Degginger offered a substitute motion to grant the appeal and deny the conditional use permit. There was no second from the Council.

Mayor Mosher clarified that the main motion, as amended by Mrs. Marshall's three motions, is still on the table for discussion.

In response to Mr. Noble, Mr. Andrews said the burden is on the appellant to show from the record that there is not substantial evidence to support the Hearing Examiner's decision, either as to the entire decision or as to any particular aspect of it. In this situation, Council is not free to substitute its judgement for the Hearing Examiner's judgement and is constrained by the "substantial evidence" requirement. In this context, substantial evidence is evidence that would convince a fair-minded person of the truth of the proposition that is offered. Further, a provision in the Land Use Code states that the Hearing Examiner's decision must be accorded substantial weight.

Speaking to the main motion, Deputy Mayor Marshall said this issue has been the most fairly debated and well researched issue before the Council during her tenure. Both sides have presented evidence in support of their positions, and Council has heard strong arguments both for and against the application. After Council's earlier decision, an appeal was taken on both substantive and procedural grounds. But the appellants abandoned their substantive appeal and concentrated only on procedural grounds, finally succeeding and convincing the judge that, technically, such a procedural error had occurred. Mrs. Marshall recognized the right of residents to seek redress for procedural irregularities and to seek a fair process. She noted that residents succeeded in returning the issue to Council for another decision and agreed that the applicant and residents are entitled to a decision based on a fair process.

Mrs. Marshall said it is significant to her that the residents abandoned their substantive arguments regarding the merits of the Hearing Examiner's decision. She feels the residents became convinced that there was not sufficient evidence to show that the Hearing Examiner made a mistake. Mrs. Marshall has come to the conclusion, contrary to her earlier vote in this matter, that the Hearing Examiner's decision is not vulnerable to attack on its merits and that there was substantial evidence in the record to support his conclusions. She feels it is time to make a decision and move on. Mrs. Marshall said there is substantial evidence in the record to support the Hearing Examiner's conclusions. She will support the request for a conditional use permit and feels adequate conditions have been imposed to mitigate the potential adverse impacts of the proposal.

Mr. Noble said he shares Mr. Degginger's concerns regarding traffic and safety issues. However, given the burden of substantial evidence and the fact that the Hearing Examiner is a

fair-minded person, as well as the fact that fellow Councilmembers who support the application are fair-minded persons, he will support the request for a conditional use permit.

Mr. Creighton said his opinion has not changed since the last two times Council discussed the issue. While this may not be the best location for a school, Mr. Creighton said the Council has not been presented with substantial evidence to overturn the Hearing Examiner's decision. Therefore, he will support the request for a conditional use permit.

- ➡ The motion to deny the appeal and to grant the conditional use permit for Open Window School with the conditions imposed by the Hearing Examiner, as amended by Mrs. Marshall's three motions, carried by a vote of 5-1 with Mr. Degginger dissenting.

Mayor Mosher asked staff to prepare an ordinance reflecting Council's decision on the matter. Mr. Andrews said staff would like to bring the ordinance to Council for action on October 8. He reminded Council and the public that the matter remains quasi-judicial until one week after Council's action on the ordinance.

At 9:19 p.m., Councilmember Lee returned to the table.

- 13. Continued Oral Communications: None.
- 14. New business: None.
- 15. Executive Session: None.
- 16. Adjournment

At 9:20 p.m., Mayor Mosher declared the meeting adjourned.

Myrna L. Basich  
City Clerk

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